93-951

No. _____

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

MARK DARULIS

Petitioner

vs.

THE UNITED STATES OF AMERICA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. If an unknown person is claimed to be seen twice, does this eliminate the need of a photo array or corporeal procedure to make a positive identification with the assurance that a similar looking person has not been accused?

2. If an individual is ordered to stop and bodily searched by a law enforcement personnel, does this constitute a seizure according to the Fourth Amendment to the United States Constitution?

3. Are exigent conditions needed to seize vehicles from private property without warrant?

4. Does probable cause exist to search a vehicle six (6) months after an alleged commission of a crime by the owner and when the owner did not even own the vehicle at the time of the alleged crime?

5. If witnesses supply a federal magistrate with false information and tamper with evidence, are they entitled to credibility to support probable cause to validate a warrant?

6. Do park rangers have jurisdiction to seize vehicles without warrant from private property?

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Petitioner

MARK DARULIS

Respondent

THE UNITED STATES OF AMERICA

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PETITION FOR A WRIT OF CERTIORARI
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Petitioner, Mark Darulis, respectfully requests that a writ of certiorari issue to review the judgment and opinion of the United Sates Court of Appeals for the Sixth Circuit refusing to disallow the tainted and unconstitutional identification of the Petitioner and the suppression of information and other evidence when all such foregoing was

gathered contrary to the Fourth and Fourteenth Amendments to the United States Constitution.

OPINIONS BELOW

The opinion of the Court of Appeals is stated as United States of America v. Mark K. Darulis, and appears in Appendix A to this Petition. The opinion of the District Court for the Northern District of Ohio, Eastern Division, appears in Appendix B to this Petition.

JURISDICTION

The Court of Appeals' Opinion was filed on July 13, 1993. A timely Petition for Rehearing was filed on July 27, 1993. The Court of Appeals' denial of the Petition for Rehearing was issued August 20, 1993, and is set forth in Appendix C. This Court's jurisdiction is invoked under Title 28, U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendments IV and XIV to the United States Constitution are set forth in Appendix D.

STATEMENT OF THE CASE

The Petitioner's statement of the case slightly differs from the Court of Appeals. The Petitioner's version is based somewhat on the rangers' own testimony on the forfeiture hearing concerning the Petitioner's vehicle. This forfeiture transcript was allowed into the record for the appeal (Appendix E).

On March 24, 1991, through information of a visitor, Park Rangers of the Cuyahoga Valley National Park, located in Northeastern Ohio, discovered 60 mounds of dirt covered with black potting soil. On this day and the next, a suspicious car was seen in the area

that was registered to a Robert Bard, a former ranger with a lengthy field investigation file. The mounds were checked weekly and the growing plants were identified as marijuana.

During the course of the investigation, on May 21, 1991, Ranger Akins found a black backpack near Quick and Akron-Peninsula Roads. This intersection is 200 yards from the marijuana plants and the backpack was found on the opposite side of the roadway from the plot. On July 13, 1991, in an area or on a questionably existing path 150 yards from the plants, Rangers Akins and Vasquez encountered an individual walking and ordered him to stop and bodily searched him. The individual was questioned and claimed his name was "Mark" and was carrying a backpack he claimed he found. It was similar to the one found 200 yards away on the other

side of the roadway from the plants and the rangers searched it. There is no reliable evidence that any consent was given. The rangers claim that they found inside the backpack a fertilizer-like substance. After this, the individual was released.

Ranger Vasquez then checked park files for possible marijuana growing suspects named "Mark" and found the name Mark Darulis. He then obtained a single 7-year-old photograph of Mark Darulis from a local police department, and both he and Ranger Akins claimed it was the individual they seized the day before. No photo array or corporeal procedure was used. On September 6, 1991, the rangers began daily surveillance of the marijuana patch.

On September 23, 1991, at approximately one-half (1/2) hour after sunset and 25 feet away, Ranger Akins,

while on surveillance, claims to have seen the same individual as on July 13, 1991, enter the patch and break off seven (7) plants. Whereupon Ranger Akins yelled for him to freeze, but the individual fled and was never apprehended. Later, a blue van was observed parked in a golf course parking lot a mile away from the plants by Rangers Vasquez and Dolges. A computer check revealed the van was registered to Mark Darulis. While Ranger Dolges stayed with the van, Ranger Vasquez obtained a tracking dog. (Reason unknown, the rangers claim they knew who was in the plot and where he lived.) Officer Vasquez entered the van to obtain a scent article for the dog. Ranger Vasquez claims the dog followed the scent alongside the roadway but then broke the tracking of the dog and took the dog directly into the marijuana plot, but there no scent could be picked up by

the dog. After approximately two (2) hours of having the van under surveillance, the rangers had it towed without warrant to the ranger station. The tow driver testified at earlier hearings he saw green, leafy plants in the van.

The following day, September 24, 1991, Park Ranger Gregory Cravatal prepared an affidavit for a search warrant. In the affidavit, he stated the van was "parked on National Park Service property at the corner of Quick and Akron-Peninsula Roads." He also prepared a map indicating the van was directly across the street from the plants. (Later when confronted with the towing company's information that it was towed from a golf course over a mile away, he claimed his statement was just a mistake.) The federal magistrate issued a search warrant upon the false information.

Inside the van, the rangers claimed to have found gardening equipment and green leafy material and seeds from the floor of the van.

On February 20, 1992, Petitioner was charged in a two count indictment. Count I alleged that Petitioner knowingly and intentionally attempted to manufacture approximately 60 marijuana plants and Count II alleged that the Petitioner knowingly and intentionally manufactured 22 marijuana plants in violation of Title 21, U.S.C. § 841(a)(1), § 841(b)(1)(C), § 841(b)(1)(D), and § 846.

The Petitioner filed motions to suppress the search and seizure of the vehicle, the identification of the petitioner was impermissibly suggestive, and park rangers lack jurisdiction to search and seize vehicles from private property without a warrant. On July 14,

1992, the district court denied all motions.

On October 13, 1992, the Petitioner still maintaining his not guilty plea, a jury trial commenced. After hearing numerous falsehoods from the rangers, the Petitioner, not wishing to risk a longer sentence on whom the jury was going to believe, entered a conditional guilty plea to Count II of the indictment. Count I was dismissed. The Petitioner was sentenced to a term of two (2) years probation, with home detention and electronic monitoring for the first six (6) months. Petitioner realizes other defendants have received harsher sentences, but feels important constitutional questions remain, plus the sufficiency and credibility of the evidence.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for four (4) reasons:

1. The opinion of the Sixth Circuit Court of Appeals is irrelevant to the facts of the case concerning the identification.

2. The opinions of the Sixth Circuit Court of Appeals conflict with the decisions of other courts of appeals.

3. The Sixth Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

4. The Sixth Circuit Court of Appeals has decided a federal question in a way that conflicts with applications of this Court.

1. If an unknown person is claimed to be seen <u>twice</u>, does this eliminate the

need of a photo array or corporeal procedure to make a positive identification with the assurance that a similar looking person has not been accused?

The Court of Appeals has made a dismaying statement saying the Petitioner was never arrested or convicted by the photograph. The Petitioner has never been in custody concerning the charges. The Petitioner has never been picked out of a photo array or a corporeal line-up. Chief witness Ranger Akins only claims to have seen the suspect twice and has claimed to identified the suspect by looking at only one 7-year-old photograph of the Petitioner. This is in complete violation of this Court's decision of Simmons v. United States, 390 U.S. 377 (1968), violating the Petitioner's due process rights contained in the

Fourteenth Amendment to the United States Constitution.

This Court has ruled that an individual's due process rights are violated when an identification process is so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. Once an identification process is determined to be impermissibly suggestive, it must be determined if there was a substantial likelihood of misidentification. A single picture spread is the most impermissibly suggestive means of identification. United States v. Workman, 470 F.2d 151 (4th Cir. 1972); United States v. Sutherland, 420 F.2d 1152 (5th Cir. 1970); Kimbrough v. Cox, 444 F.2d 8 (4th Cir. 1971). All cases deal with single picture spreads and all cases were thrown out. On September 23,

1991, at almost one-half (1/2) hour after sunset and 25 feet away, Ranger Akins claims she can identify this person from the single 7-year-old photograph she has previously seen two months earlier. Petitioner contends that under these conditions, there is a substantial likelihood of misidentification of anyone who was in the plot that night.

Considering an in-court identification, it should not be allowed. "Impermissibly suggestive" picture spread requires the exclusion of any in-court identification as to which there was a substantial likelihood of irreparable misidentification." Simmons v. United States, 390 U.S. at 377.

The appellate court's decision states, "The photograph merely informed them that Mark Darulis was the name of that individual." The Petitioner

questions what guarantees can the court give that the rangers were correct in their identification or was Mark Darulis just similar to this individual. The purpose of photo arrays and corporeal procedures is to eliminate any doubt that a similar looking person has not been accused. Thus, it is constitutionally protected that all identification procedures be of such nature to eliminate any doubt. Although the Petitioner realizes that his vehicle being located over a mile away from the plot in a golf course parking lot is evidence against him, this is still no guarantee that he was the one in the plot. The Petitioner also does not believe that the evidence taken from his van is alone enough for conviction since it was just gardening equipment. The identification of the suspect must be made to connect this

equipment with the marijuana site (not that it ever was used at the site and the van it was found in was never even owned by the Petitioner at the time of cultivation but by a Mark Berkeley of Canton, Ohio). Thus, the identification is crucial. Further quoting, "defendant was not arrested nor convicted on the basis of the photographic identification." Petitioner questions then why was he sitting in a courtroom. It is certainly doubtful just because his van had gardening tools in it. There are many more uses of gardening tools than just for marijuana. The government contended he was the one pulling plants that would connect these gardening tools to the plot, and the only way they identified him was through a single 7-year-old photo and the court can give no guarantee or constitutional assurance through a photo

array or corporeal procedure that the Petitioner was not just similar looking. Therefore, according to Simmons and the other cases, the identification should be excluded (also in-court identification) due to violation of due process, and the seizure of the van should be excluded because the only probable cause that existed to seize it was that it was registered to the Petitioner.

2. If an individual is ordered to stop and bodily searched by a law enforcement personnel, does this constitute a seizure according to the Fourth Amendment to the United States Constitution?

The Court of Appeals has ruled the suspect was not seized on July 13, 1993, and all evidence gathered is admissible. This is directly contrary to this Court's

decision in United States v. Mendenhall, 446 U.S. 545, 551 (1980).

"A person has been seized within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave, and as long as the person to whom questions are put remains free to disregard the questions and walk away . . ." Also, "Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." Id. at 554.

In the present case, much more happened to the suspect than, quoting the Court of Appeals, "the Rangers merely questioned defendant about the backpack he was carrying and asked permission to search it." Citing from the Forfeiture Transcript:

> Question: And approximately how far were you from the plot?
>
> Ranger Akins:
>
> Answer: Still probably 150 yards or so.
>
> "Ranger Vasquez and myself wanted to ask him a few questions to ascertain if this was our suspect,and we followed after him and called him to stop."
>
> "He did a quick pat down of the suspect."
>
> Ranger Vasquez:
>
> "So I ordered the defendant to stop."

So from the following:

1. Two supposedly armed law enforcement officials followed and approached the suspect.

2. The suspect was ordered to stop.

3. The suspect was patted down.

There is no doubt these circumstances would indicate a seizure, even where the person did not attempt to leave. United States v. Mendenhall, 446 U.S. at 554. Furthermore, the Petitioner does not believe that a reasonable person would feel "free to disregard the questions and walk away" after being followed and ordered to stop by two law enforcement officers and being bodily searched. Petitioner also does not believe that this Court would recommend to an individual to just "walk away" from two law enforcement personnels after being followed and ordered to stop and submitted to a body search. This suspect was definitely seized. Therefore, the suspect was seized just because he was:

1. 150 yards away from a marijuana plot.

2. On a questionably existing path that could lead anywhere and many other people could have traveled.

3. Carrying a similar backpack found 200 yards away from the plot.

These circumstances certainly do not seem to add up to a reasonable suspicion that the suspect was engaged in criminal activity that would justify a Terry search, and thus, this unreasonable seizure must be deemed unlawful and whatever evidence obtained cannot be usable. Murray v. United States, 487 U.S. 321 (1988); Segura v. United States, 468 U.S. 796 (1984); Dunaway v. New York, 442 U.S. 218-219 (1979). Thus, without this "Mark" name being the "fruit" of an unlawful seizure, this case must come to a close because this is the only way they came up with the last name of Darulis.

This name then led the rangers to seize the vehicle, apply for a search warrant, and indict the Petitioner. Also, nowhere in the record can the Petitioner find, quoting the Court of Appeals, "as defendant concedes, he consented to it." (Search of the backpack). Further, the government has the burden of proving that the necessary consent was obtained and that it was freely and voluntarily given, a burden that is not satisfied by showing a mere submission to a claim of lawful authority. Lo-Ji Sales, Inc. v. New York, 482 U.S. 319, 329 (1979); Schneckloth v. Bustamonte, 412 U.S. 218, 233-234 (1973). The government has not proven this burden. In fact, if it is true that this backpack contained "fertilizer" meant for marijuana, it defies logic that any consent was given.

3. Are exigent conditions needed to seize vehicles from private property without warrant?

The Court of Appeals has ruled that exigent conditions are no longer needed to seize vehicles and that the existence of probable cause alone justifies a warrantless seizure of a vehicle lawfully parked in a public place. This Court of Appeals has extended this Court's opinion on probable cause only searches to include seizures. This Court has never made that determination yet. Furthermore, the cases cited rely on vehicles in public places. The Petitioner's vehicle was parked on private property. A parking lot, such as the one at Brandywine Golf Course, can be considered private property even though the public is permitted to park there to use the facilities of the golf course.

Shaff v. R.W. Claxton, Inc., 79 U.S. App. D.C. 207 (1944). Furthermore, once a business is closed, "it ceases prima facie to be a public place and, in absence of other proof, is not to be regarded as a public but rather a private place." People v. Wuest, 201 N.Y.S.2d 834 (1960). Any curtilage of a business, such as its parking lot, should certainly enjoy the same right. According to the record, the rangers never seized the Petitioner's vehicle until approximately 10:00 at night, long after closing hours of the golf course. It would seem that law enforcement authority is lessened on private property and since the vehicle was seized from private property, the standard of Coolidge v. New Hampshire, 403 U.S. 443 (1971), should still be accepted, that along with probable cause, the "now or never" clause of exigent

conditions must also exist. To prove exigent conditions, the government must even prove a telephone warrant would not be possible. United States v. Cuaron, 700 F.2d 582 (10th Cir. 1983); United States v. Manfredi, 722 F.2d 519 (9th Cir. 1984); United States v. Jones, 696 F.2d 479 (11th Cir. 1982). The rangers admit they had the Petitioner's vehicle under surveillance for over two (2) hours, more than enough time for a telephone warrant that they did not get. Furthermore, to seize a vehicle is a much greater act than the mere search of it, especially since this vehicle contained a bed and the Petitioner's clothes and thus could be claimed as the home of the Petitioner. Langar v. State of New York, 370 U.S. 139 (1962).

4. Does probable cause exist to search a vehicle six (6) months after an

alleged commission of a crime by the owner and when the owner did not even own the vehicle at the time of the alleged crime?

The alleged cultivation crime occurred on March 24, 1991. The Petitioner purchased the vehicle that was searched on May 23, 1991. The search warrant was effectuated September 24, 1991. The Petitioner does not believe that a fair probability that contraband or evidence of a crime existed in a vehicle he did not even own at the time of the crime. Illinois v. Gates, 462 U.S. 213 (1983). Furthermore, the search warrant was executed six (6) months after the crime representing a state probable cause that will not be accepted. Sygro v. United States, 287 U.S. 206 (1932). If the Petitioner had become a suspect earlier in the summer, the search warrant

should have been served then. The claim that the Petitioner was seen pulling some plants out of the ground hardly seems a convincing probable cause that a van he did not even own six (6) months prior when the cultivation occurred would have gardening equipment in it. The only other information the rangers had on the Petitioner was a faulty identification procedure involving a 7-year-old picture of a "Mark" walking through the park with a backpack he had claimed he had found.

These facts do not even give rise to a reasonable suspicion, much less probable cause to believe that gardening equipment, would be found in the Petitioner's van in a golf course parking lot over a mile away.

Far from constituting probable cause, the wholly conclusory and tenuous information possessed by the park rangers

at the time they seized and entered Petitioner's vehicle does not add up to anything greater than a hunch that Petitioner's vehicle might contain incriminating evidence. United States v. Brinegar, 338 U.S. 160 (1949). "If the information simply does not add up to probable cause, even after according proper deference to the magistrate's determination, . . . the warrant will be held invalid." United States v. Savoca, 761 F.2d 292 (6th Cir. 1985).

5. If witnesses supply a federal magistrate with false information and tamper with evidence, are they entitled to credibility to support probable cause to validate a warrant?

1. The Affidavit for the search warrant, after the vehicle was seized, states the Petitioner's van was parked at the corner of Quick and Akron-

Peninsula Road on national park property. This area on the search warrant according to the transcript just happens to be right across the street from where these marijuana plants were growing. In actuality, the vehicle was parked over one (1) mile away on private property at a golf course parking lot. The rangers claimed this was an "innocent mistake." They insult anyone's intelligence if they expect this to be believed that it was a "mistake." They also never came forward with this information until they were confronted with the towing company's records. They not only purposely mislead the magistrate in the Affidavit, they provided the magistrate with a knowingly incorrect map placing the van right across the street from the plants. Also, the rangers involved with the van (Vasquez, Dolges, and Bland) apparently

all had to conspire together to get their story straight about the incorrect location to make it look like the Petitioner was involved.

2. The rangers claim they found marijuana and seeds on the floor of the van. Obviously, the tow truck driver, Bernard Mason, has no reason to lie, not being involved in this case. He came forward with the truth about towing the van out of the golf course parking lot, and the rangers had no choice but to admit their untruth about the location. (They tried to cover it up by calling it a "mistake.") Further testimony in the suppression hearing indicated that the tow truck driver saw green, leafy, stalks in the van. According to the transcript, the suspect fled on foot when approached by a ranger by the marijuana plot and was never apprehended. At this time, the

rangers had control of all the green, leafy, stalks of marijuana and somehow they ended up in the Petitioner's van. It is clearly obvious that the only explanation is that the rangers had committed a serious crime of tampering with evidence and put the stalks in there which would have left the seeds and leaves on the floor. This is a heinous act. By putting the marijuana in there, what else would they have put in there or claimed to have found?

3. Other inconsistencies are that the rangers claimed to encounter "Mark" on a path leading to the marijuana site. Their own testimony states "Mark" is 150 yards from the site. They also state they cannot even find the plot or it takes them an hour to do so. It seems unfeasible that if this plot were on a path, it could take them an hour to find

it. If there is a path, it would seem logical that it leads many places after 150 yards.

4. Petitioner further contests the credibility and constitutionality of his name even appearing in the search warrant. Further, after all of these actions of the rangers, the good faith exception pursuant to United States v. Leon, 468 U.S. 897 (1984), cannot apply. Due to the non-credible testimony of the rangers in this investigation and the only alleged fact tying this marijuana plot to the Petitioner is Ranger Akins' testimony of whoever was in the plot must be considered highly questionable and not deserving a credible determination of probable cause that would validate a warrant.

6. Do park rangers have jurisdiction to seize vehicles without warrant from private property?

The Court of Appeals has ruled they do in direct conflict with the tenth circuit in Aiuppa v. United States, 338 F.2d 146 (10th Cir. 1964), and by implication of United States v. Smith, 713 F.2d 491, 493 (9th Cir. 1983). Further, this Court has never addressed this issue.

The law enforcement authority of agents of the National Park Services is contained in Title 16, U.S.C. § 1(a)-6(a). That law states as follows:

> . . . the Secretary of the Interior is authorized to designate . . . certain officers or employees of the department of the Interior who shall maintain law and order and protect persons and properties within area of the national Park System. In the performance of such duties, the officers or employees so designated may:
>
> (1) . . . make arrest without warrant for any offense against the United States committed in his presence, or for any felony cognizable under

> the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony, provided such arrest occur within that system or the person to be arrested is fleeing therefrom to avoid arrest;
>
> (2) Execute any warrant or other process issued by a Court or officer of competent jurisdiction for the enforcement of the provisions of any federal law or regulation issued pursuant to law arising out of an offense committed in that system or, where the person subject to the warrant or process is in that system, in connection with any federal offense; and
>
> (3) Conduct investigations of offenses against the United States committed in that system in the absence of investigation thereof by any other federal law enforcement agency having investigative jurisdiction over the offense committed or with the occurrence of such other agency.

The authority of National Park Service rangers is thus specifically set forth. If they do not act within the

bounds of this authority, then they are acting without jurisdiction. "NPS employees have limited law enforcement duties, relating primarily to offenses committed within the National Park System." Flynn v. United States, 902 F.2d 1524, 1528 (10th Cir. 1990).

Using ordinary principles of statutory construction, clearly subparagraphs (1) and (2) do not authorize warrantless searches or property seizures, and to claim "conduct investigations" means warrantless search and seizure in subparagraph (3) sweeps far too broadly.

A construction of the subparagraph (3) phrase "conduct investigations" that grants authority to conduct warrantless searches and seizures would render subparagraphs (1) and (2) of the statute unnecessary. There would be no point in

carving out an exception for warrantless arrests in subparagraph (1) if the phrase "conduct investigations" in subparagraph (3) contemplates authority to execute warrantless searches and seizures of property as well. Similarly, there would be no point in subparagraph (2) authorizing rangers in all cases to execute warrants if a subparagraph (3) "investigation" grants rangers the authority to do those same things without a warrant. In short, if authority to "conduct investigations" in subparagraph (3) means implied authority to do everything in the area of search and seizure not expressly authorized by subparagraphs (1) and (2), why enact the statute at all?

As the court in Aiuppa v. United States, 338 F.2d at 146, explained with respect to warrantless searches. There,

federal game management agents seized certain birds without a warrant in the process of investigating what appeared to be a violation of federal law. In so seizing the game, the agents were relying upon a statute which gave them the power, without warrant, to arrest any person committing a violation in his or her presence and which further gave the agent authority, with a search warrant, to search any place. In upholding a Motion to Suppress, the Tenth Circuit Court of Appeals ruled that the warrantless search of the automobile of the defendant was improper. At the time, the defendant was not under arrest. The government contended that the agents were acting within their statutory authority which, it contended, implied a power to search and seize without a warrant with probable cause. The Tenth Circuit rejected such

argument and stated that there was no such implied power and that the agents only had specific authority given to them.

> While the statute authorizes an arrest without a warrant for violation committed in the Agent's presence or view, it does not authorize a warrantless search. Instead, it expressly delegates to judges and commissioners authority to issue warrants in all such cases upon a proper showing of probable cause. It is thus manifestly clear, we think, that Congress deliberately withheld from these Agents the province of determining cause and the exceptional circumstances which would justify an expeditious warrantless search. This interpretation of the statute is consonant with the highly restricted province of any enforcement officer to appraise the extraordinary circumstances under which a search without a warrant would be justified. (Emphasis added).

Further, in United States v. Smith, 713 F.2d at 493, the Court implies park rangers have no jurisdiction off park

property. "In this case the park police officers may well have been without authority to make arrest of Smith off federal property." Id. If they are without authority to act upon an arrest, then it would seem they are without authority to act upon warrantless seizures off federal property.

In the present case, the park rangers seized the van without warrant. Section 1a-6 nowhere authorizes the park rangers to seize property without a warrant. It does expressly give the agents authority to execute a warrant issued by a competent court but no authority for warrantless seizure is given. Furthermore, the vehicle was on private property outside the jurisdiction of the park rangers and only an excuse of "hot pursuit" would permit them outside their jurisdiction. There is no

"hot pursuit" in this case involving the van. In fact, at no time ever was this van even ever seen on government property. As a result, the rangers have no jurisdiction or authority to seize the van or its contents without a warrant.

CONCLUSION

For all of the reasons set forth, the Petitioner requests that a writ of certiorari should issue to review the opinion of the Court of Appeals in all of the foregoing matters.[1]

Respectfully submitted,

Mark Darulis

Mark Darulis
3391 Montrose Avenue
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[1]/ If this Court elects not to address the issues presented in this writ at the present time, it is requested that the writ issue and the matter be remanded to the Court of Appeals to address and redetermine all issues in conflict with other courts including this one.

APPENDIX

FILED
JUL 13 1993
LEONARD GREEN, Clerk

No. 93-3154

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. MARK K. DARULIS, Defendant-Appellant.	On Appeal from the United States District Court for the Northern District of Ohio.

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BEFORE: KENNEDY and NORRIS, Circuit Judges, and ENGEL, Senior Circuit Judge.

PER CURIAM. Defendant Mark K. Darulis appeals his conviction for knowingly and intentionally manufacturing

twenty-two (22) marijuana plants, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(D), imposed following his conditional plea of guilty. On Appeal, defendant contends that the District Court erred in denying his motions to suppress evidence obtained as a result of a seizure and search of his van by officers of the National Park Service (NPS). We find no Fourth Amendment violation, and affirm.

I

The record before the District Court disclosed the following as the basis for the search of defendant's van. On March 24, 1991, a visitor to the Cuyahoga Valley National Recreation Area reported seeing a van with a shovel in a remote area of the park. The visitor told the National Park Service Rangers that when this man saw him, he threw down the

shovel and fled on foot. The visitor then led the Rangers to the area of the Park where the encounter took place. Here, the Park Rangers found sixty (60) mounds of dirt evenly spaced in four (4) rows in a swampy area. Each mound was covered with dry black potting soil mixed with white flecks. Thereafter, the Rangers checked the mounds weekly and in June identified the growing plants as marijuana.

During the course of the investigation, on May 21, 1991, Ranger Akins found a black nylon backpack containing a plastic gallon jug of water near Quick and Akron-Peninsula Roads. On July 13, 1991, on a path leading to the marijuana site, Rangers Akins and Vasquez encountered a man carrying a black backpack which Akins recognized as the one she had previously seen near the

marijuana patch. The man identified himself as "Mark" and told the Rangers that he had found the backpack. He consented to a search of the backpack in which the Rangers discovered a fertilizer-like substance. Nothing further took place during this encounter.

The next day, July 14, 1991, Ranger Vasquez checked park filed for possible marijuana growing suspects and found the name "Mark Darulis." Vasquez then obtained a seven-year-old photo of Darulis from the Cuyahoga Falls Police Department and identified him as the man he had seen walking in the park the previous day. Vasquez then showed the photograph to Ranger Akins who also identified Darulis as the man she had seen the previous day. On September 6, 1991, the Rangers began daily surveillance of the marijuana patch.

On September 23, 1991, Mark Darulis was seen walking on the Akron-Peninsula Road toward the marijuana patch. At approximately 7:40 p.m., Ranger Akins observed him enter the marijuana patch, break off seven (7) mature plants, and stack them under a tree. Ranger Akins then confronted Darulis and yelled for him to "freeze," whereupon Darulis fled. That same night, during the search for defendant, Rangers Vasquez and Dolges observed a blue van parked in the area of the Brandywine Golf Course parking lot (about one-half to one mile away from the marijuana patch). A computer check revealed that the van was registered to Mark Darulis. The Rangers searched for the defendant for approximately two (2) hours and waited for him to return to the van. When he did not return, the Rangers had the van towed to the Ranger Station.

The following day, September 24, 1991, National Park Ranger Gregory Cravatas prepared an affidavit for a search warrant for the van. The magistrate judge issued the warrant, authorizing a search of the van for various items, including marijuana, marijuana cultivation tools, fertilizer, customers' names, addresses and phone numbers. The warrant was executed by National Park Rangers at 8:30 p.m. that same evening. The Rangers found and seized one black nylon duffel bag, two shovels, a box of vegetable food, a plastic water container, two bags of potting soil, a bag of vermiculite, two black nylon backpacks, a folding shovel, a spool of monofilament line, road maps, a wallet containing the defendant's driver's license, green leafy material

and seeds from the floor of the van and other miscellaneous items.

On February 20, 1992, defendant was charged in a two count indictment. Count I alleged that defendant knowingly and intentionally attempted to manufacture approximately sixty (60) marijuana plants, in violation of 18 U.S.C. §§ 841(a)(1) and (b)(1)(C) and 846. Count II alleged that defendant knowingly and intentionally manufactured twenty-two (22) marijuana plants, in violation of §§ 841(a)(1) and (b)(1)(D).

Defendant filed several motions to suppress the evidence seized from his van. Specifically, on March 24, 1992, defendant filed a Motion to Suppress claiming the agents did not have probable cause to search the vehicle and that the search warrant issued was based on erroneous information. On April 6, 1992,

defendant filed a Supplemental Motion to Suppress alleging that the affidavit in support of the search warrant was incorrect as to the location of defendant's van. On June 19, 1992, defendant filed a second Supplemental Motion to Suppress regarding the items found in a locked box within the van for the reason that an additional warrant for the box was needed. Finally, on June 22, 1992, a Motion to Suppress the Identification of the defendant was filed alleging the identification was unduly suggestive and defendant filed an additional Motion to Suppress claiming the National Park Rangers lacked jurisdiction to "investigate, seize or make affidavit for search warrant." On July 14, 1992, the District Court denied all of the defendant's Motions to Suppress.

On October 13, 1992, a jury trial commenced. Prior to the completion of the government's evidence, the defendant entered a conditional guilty plea to Count II of the indictment. Count I was dismissed. Defendant was sentenced to a term of two (2) years probation, with home detention and electronic monitoring for the first six months.

II. Motions to Suppress

Defendant argues that the District Court committed reversible error in failing to suppress the evidence seized from the search of defendant's van. "On review of motions to suppress evidence, findings of fact will be upheld unless clearly erroneous; however, a district court's conclusions of law are reviewed de novo." United States v. Duncan, 918 F.2d 647, 650 (6th Cir. 1990) (quoting United States v. Sangineto-Miranda, 859

F.2d 1501, 1512 (6th Cir. 1988)), cert. denied, 111 S. Ct. 2055 (1991).

A. The Identification of the Defendant

The defendant's first challenge is to the Rangers' (Vasquez and Akins) identification of him through the use of a seven-year-old photograph. Defendant contends that checking the files for possible drug suspects named "Mark," obtaining a photograph as a result of this search, and using only this one photograph to make an identification, was unduly suggestive and therefore in violation of his rights. It is undisputed that the Rangers who made the identification were investigating the growing of marijuana on park property. In obtaining the photograph, the Rangers were merely attempting to identify the individual they had encountered near

the marijuana patch in the park. The photograph merely informed them that Mark Darulis was the name of that individual. No action was taken by the Rangers in reliance on the photograph, and defendant was not arrested nor convicted on the basis of the photographic identification. The search warrant for defendant's van was not executed until after the Rangers witnessed the defendant, in person, pulling out the mature marijuana plants from the patch. Thus, identification of the defendant from the photograph was only an investigative procedure to learn the identity of the person initially observed and did not warrant suppression of the evidence seized from his van.

B. *Terry* Stop

Defendant further contends that the Rangers' initial encounter with him on the path leading to the marijuana patch

and their subsequent search of the backpack he was wearing violated his rights under the Fourth Amendment. It is well established that not every encounter between the police and citizens are seizures within the meaning of the Fourth Amendment. United States v. Winfrey, 915 F.2d 212, 216 (6th Cir. 1990) (citing Terry v. Ohio, 392 Ohio 1, 19 (1968)), cert. denied, 498 U.S. 1039 (1991). Specifically, "police questioning, by itself, does not result in a fourth amendment violation." Id. A seizure occurs only when a reasonable person, in light of the circumstances surrounding the encounter with law enforcement agents, believes he is not free to leave. Id. (citing United States v. Mendenhall, 446 U.S. 544, 554 (1980)). We find that a reasonable person would conclude that defendant was not seized for purposes of

the Fourth Amendment when the Rangers merely questioned defendant about the backpack he was carrying and asked his permission to search it. The search did not implicate any Fourth Amendment rights because, as defendant concedes, he consented to it.

C. Probable Cause to Seize the Van

Shovels, vegetable food, a plastic water container, plotting soil, green leafy material and seeds were found upon a search of the defendant's van, conducted pursuant to a search warrant, one day after the van was towed to the Ranger Station. Defendant contests the sufficiency of the affidavit in support of the search warrant and also contends that an unconstitutional seizure of the van occurred when it was towed because the seizure was effectuated without a

warrant. Accordingly, defendant asserts that the unconstitutional seizure tainted the subsequent search and thus the District Court shculd have suppressed the evidence found in the van. This Court reviews the question of the lawfulness of the automobile seizure as a mixed question of law and fact to which a de novo standard of review applies. United States v. Bagley, 772 F.2d 482, 289 (9th Cir. 1985), cert. denied, 475 U.S. 1023 (1986).

First the Rangers' exercise of control over the van (i.e., the towing) resulted in a meaningful interference with defendant's possessory interest and therefore constituted a "seizure" within the meaning of the Fourth Amendment. Autoworld Specialty Cars, Inc. v. United States, 815 F.2d 385, 389 (6th Cir. 1987). See also Bagley, 772 F.2d

at 490 (acknowledging that "towing the [defendant's] automobile to the police lot constituted a seizure within the meaning of the fourth amendment"). Katz v. United States, 389 U.S. 347, 357 (1967). One of the well-established exceptions encompasses searches and seizures of automobiles. Carroll v. United States, 267 U.S. 132 (1925). In California v. Carney, 471 U.S. 386 (1985), the Supreme Court reiterated that exigent circumstances and diminished expectations to privacy are the two primary bases for the automobile exception to the warrant requirement. In Carney, the Court makes clear that under this exception, probable cause alone suffices to justify a warrantless search of a vehicle lawfully parked in a public place, as long as the scope of the search is reasonable. See Bagley, 772 F.2d at

491. Several Courts, including this one, have recognized that a logical extension of the Supreme Court's opinion in Carney is that if the existence of probable cause alone justifies the warrantless search of a vehicle parked in a public place, then a warrantless seizure of such a vehicle, based only upon probable cause, also falls within the automobile exception. Autoworld, 815 F.2d at 389; United States v. Cooper, 949 F.2d 737, 747 (5th Cir. 1991) ("We believe that probable cause alone also suffices to justify seizing a vehicle on a public street as evidence or instrument of a crime."), cert. denied, 112 S. Ct. 2945 (1992); Bagley, 772 F.2d at 491.

In Autoworld, government agents removed five vehicles from the Autoworld showroom for noncompliance with safety and air pollution standards. This Court

upheld the warrantless seizure. The Court stated, "since the vehicles were inherently mobile and the officers had probable cause to associate them with the criminal activity, the warrantless seizure did not violate the fourth amendment." Autoworld, 815 F.2d at 389. See also Bagley, 772 F.2d at 491 ("We now hold that the existence of probable cause alone justifies a warrantless search or seizure of a vehicle lawfully parked in a public place."). Here, the facts known to the Rangers at the time they towed defendant's van were as follows:

1. On July 13, 1991, Rangers encountered Mark Darulis on a path leading to the marijuana patch carrying a backpack containing fertilizer.

2. On September 23, 1991, Rangers observed Mark Darulis enter the marijuana patch, break off seven mature marijuana plants and stack them under a tree.

3. When Ranger Akins confronted Darulis, he fled.

4. Rangers located Darulis' van in the Brandywine Golf Course parking lot (approximately one mile from the marijuana patch).

In these circumstances, the Rangers had probable cause to believe the van contained evidence of criminal activity. Accordingly, the seizure comported with the Fourth Amendment.[1]

D. Probable Cause to Issue Search Warrant

Defendant further contends that the search warrant for his van lacked probable cause and was based on erroneous information that invalidated the search. When issuing a warrant, the task of the magistrate judge "is simply to make a

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[1] In addition to probable cause, exigent circumstances also existed which necessitated prompt removal of the van from the parking lot. As defendant was yet to be apprehended, the Rangers had a legitimate concern that he might attempt to remove the van. Thus, the exigent circumstances prong of the automobile exception is also satisfied.

practical, common-sense decision whether, given all the circumstances set froth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 238 (1983). On review, this Court must give the magistrate judge's decision great deference, reviewing simply to ensure that the magistrate judge had a "substantial basis for . . . conclud[ing] that probable cause existed." Id. at 28-39.

In support of the request for a search warrant, NPS Ranger Gregory Cravatas swore out an affidavit describing (1) the marijuana patch growing in the field; (2) Rangers Akins and Vasquez' initial encounter with defendant on the path leading to the patch; (3) the Rangers' surveillance of

the patch and the defendant's actions in pulling out seven marijuana plants; (4) defendant's flight from the patch when confronted by Ranger Akins; and (5) the Rangers' discovery of defendant's van a short distance from the patch. Upon review of the affidavit, we believe the magistrate judge had before him sufficient information to conclude that a fair probability existed that evidence of a crime would be found in the van.

Defendant contends, however, that the warrant issued by the magistrate judge was based upon erroneous information and that had correct information been presented, the magistrate judge would have found no probable cause to issue the warrant. Specifically, paragraph 15 of the affidavit states:

> On September 23 @ 7:50 pm, Rangers Vasquez and Dolges observed a blue Dodge van parked on National Park Service property at the corner of Quick and Akron-Peninsula Roads. A computer check indicated the registered owner is Mark Darulis.

Joint App. at 103. The affiant, Ranger Cravatas, testified at the suppression hearing that he believed this information to be correct as related to him by the other officers involved in the investigation at the time, and that it was not until some time later that he found out the van was, in fact, parked at the Brandywine Golf Course, about a half mile to a mile down the street from the park.

Under the standard set forth by the Supreme Court in Franks v. Delaware, 438 U.S. 154, 171 (1978), a proven misstatement can vitiate an affidavit only if it is established that the

misstatement was the product "of deliberate falsehood or of reckless disregard for the truth. . . . Allegations of negligence or innocent mistake are insufficient." This Court has likewise recognized that:

> A defendant who challenges the veracity of statements made in an affidavit that formed the basis for a warrant has a heavy burden. His allegations must be more than conclusory. He must point to specific false statements that the claims were made intentionally or with reckless disregard for the truth. He must accompany his allegations with an offer of proof. Moreover, he also should provide supporting affidavits or explain their absence. If he meets these requirements, then the question becomes whether, absent the challenged statements, there remains sufficient content in the affidavit to support a finding of probable cause.
>
> If probable cause exists absent the challenged statements, a defendant is entitled to no more . . . .

United States v. Bennett, 905 F.2d 931, 934 (6th Cir. 1990) (citations omitted). The District Court found that defendant failed to comply with these procedural requirements. The Court further found that even absent the challenged statement, probable cause still existed. These findings are not clearly erroneous.

E. Search of the Locked Box in the Van

The defendant next contends that the evidence discovered from his van should be suppressed because the search of the locked box inside the van was not conducted pursuant to a valid warrant. Defendant relies on United States v. Chadwick, 433 U.S. 1 (1977), to support his position. In Chadwick, the Supreme Court rejected, on Fourth Amendment grounds, evidence seized from a double-locked footlocker which had been placed

in the truck of a waiting car. The Court held that there were no exigent circumstances and that the warrantless search of the footlocker deprived defendants of the protection of the Warrant Clause of the Fourth Amendment.

The case at issue differs from Chadwick in that the Rangers had a valid warrant authorizing a search of the van for "marijuana, marijuana seeds, marijuana cultivation tools, documents reflecting purchases of items which are used to grow marijuana, check books, savings books, and other financial documents . . . reflecting deposits of marijuana sales, and customer names, addresses and phone numbers." Joint App. at 61. Pursuant to the principle that the scope of a search is generally defined by its expressed object, Florida v. Jimeno, 111 S. Ct. 1801

(1991), the Rangers lawfully searched the locked box. In a case involving police officers' search of closed luggage found in the Bronco that they had a warrant to search, the Ninth Circuit reasoned that:

> It is axiomatic that if a warrant sufficiently describes the premises to be searched, this will justify a search of the personal effects therein . . . if those effects might contain the items described in the warrant. Because the warrant authorized the search of the Bronco, the agents could lawfully search any luggage found therein that might contain the contraband listed in the warrant. United States v. Chadwick . . . is inapposite. That case involved the search of a locked footlocker in the truck of a car when the search of the car itself was without a warrant.

United States v. Grandstaff, 813 F.2d 1353, 1358-59 (9th Cir.), cert. denied, 484 U.S.837 (1987). See also United States v. Kralik, 611 F.2d 343 (10th Cir.

1979) (finding that officers not required to obtain an additional warrant for search of suitcase found in trunk of automobile where officers already had a warrant authorizing search of the automobile for a sawed-off shotgun concealed therein), cert. denied, 445 U.S. 953 (1980). Therefore, as the District Court found, because the items listed in the search warrant "could have been found in the box, the rangers were authorized to search the box without obtaining an additional search warrant." Joint App. at 65.

This finding is consistent with Supreme Court case law regarding warrantless searches of automobiles. Under the "automobile exception" to the warrant requirement, an officer may conduct a warrantless search of every part of a legitimately stopped vehicle,

including the trunk and all containers, if there is probable cause to believe it contains contraband. California v. Acevedo, 111 S. Ct. 1982 (1992); United States v. Ross, 456 U.S. 798, 820-21 (1982). Consequently, it follows that what officers are authorized to do without a warrant, they may likewise do with a warrant, especially in light of the courts' desire "to encourage use of the warrant process by police officers and with the recognition that once a warrant has been obtained, intrusion upon interests protected by the Fourth Amendment is less severe than otherwise would be the case." Massachusetts v. Upton, 466 U.S. 727, 733 (1984).

F. Authority of the National Park Service Rangers

Defendant's final contention is that the NPS Rangers lacked jurisdiction

to conduct the warrantless seizure and subsequent search of his van. As United States Park Rangers, Rangers Akins, Vasquez, Cravatas and Dolges (and all others involved in the investigation), had substantially the same power and duties as other federal law enforcement officers. United States v. Gibson, 896 F.2d 206, 209 (6th Cir. 1990). Specifically, 16 U.S.C. 1a-6(b) authorizes park rangers to (1) carry firearms and make arrests without warrant; (2) execute warrants issued by a court; and (3) "conduct investigations of offenses against the United States committed in that [park] system in the absence of investigation thereof by any other Federal law enforcement agency having investigative jurisdiction over the offense committed or with the concurrence of such other agency." While

the Rangers' investigative authority is limited to federal offenses occurring within the park system, it is not limited by the statute to park property. United States v. Smith, 713 F.2d 491, 494 (9th Cir. 1983). In this case, there was no other investigation by a federal law enforcement agency. Additionally, the District Court found that "[t]he rangers were investigating a [federal] offense which occurred on park property. They had reason to believe that the van contained contraband or evidence of this offense and therefore had the authority to impound the van and secure a search warrant." Joint App. at 66. The search and seizure of defendant's van was within the Rangers' authority under section 1a-6(b)(3).

III

For the aforementioned reasons, defendants conviction and sentence are **AFFIRMED**.

(stamp) A TRUE COPY

Attest:

LEONARD GREEN, Clerk

By s/Valerie Fields

Deputy Clerk

FILED
1992 JUL 14

United States District Court
Northern District of Ohio
Eastern Division

UNITED STATES OF AMERICA,	)	Case No. 5:92 CR 48
Plaintiff,	)	
vs.	)	
MARK K. DARULIS,	)	
Defendant.	)	ORDER

BATTISTI, J.

On February 20, 1992, Defendant Mark K. Darulis was indicted by a United States Grand Jury on two counts. The first count alleges that Defendant attempted to plant, grow, cultivate and produce approximately sixty marijuana plants in violation of Title 21, Sections 841(a)(1), (b)(1) of the United States Code. The second count alleges that Defendant did knowingly and intentionally

manufacture marijuana in that he planted, grew, cultivated and produced approximately twenty-two marijuana plants in violation of Title 21, Sections 841(a)(1) and (b)(1)(D).

Defendant filed several motions to suppress. The Court held a hearing on those motions on June 24, 1992. For the reasons stated below, Defendants' motions are denied.

In accordance with Federal Rule [], the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On March 24, 1991, a visitor to the Cuyahoga Valley National Recreation Area reported seeing a man with a shovel in a remote area of the park. He stated that when the man saw him, the man threw down his shovel and fled on foot. The visitor led National Park Service Rangers

to the area. The rangers found sixty mounds of dirt evenly spaced in four rows in a swampy area. Each mound was covered with dry black potting soil mixed with white flecks.

2. The rangers began an investigation. They checked the mounds weekly. In June, rangers identified the plants as marijuana.

3. On May 21, 1991, Ranger Akins found a black nylon backpack containing a plastic gallon jug of water near Quick and Akron-Peninsula Roads.

4. On July 13, 1991, Rangers Akins and Vasquez were in the area of the marijuana patch when they encountered a man carrying a black backpack. Akins recognized the pack as being the one she had seen previously near the marijuana patch. The man identified himself as "Mark." He indicated that he had found

the pack and consented to a search of the pack. Ranger Vasquez recognized a fertilizer-like substance inside the pack.

5. On July 14, 1991, Ranger Vasquez checked park files for possible marijuana growing suspects. He found the name Mark Darulis. Ranger Vasquez went to the Cuyahoga Falls Police Department and obtained a picture of Darulis. He identified him as the individual he had seen walking in the park the previous day He showed the picture to Ranger Akins who also identified him as the man she had seen in the park.

6. On September 6, 1991, rangers began daily surveillance of the marijuana patch.

7. On September 23, 1991, Darulis was seen walking on Akron-Peninsula Road towards the marijuana patch. Ranger

Akins observed him enter the marijuana patch, break off seven mature marijuana plants and stack them under a tree. When she confronted him, he fled on foot.

8. Also on September 23, 1991, Rangers Vasquez and Douglas observed a blue Dodge van parked in the area of the Brandywine Golf Course parking lot. A computer check revealed that the vehicle was registered to Mark Darulis. Rangers waited for over two hours for Darulis to return to his van. When Defendant did not return, the rangers had the van towed to the ranger station.

9. The rangers also ran a computer check on Darulis to determine if he had a criminal record. The check revealed that he had been previously arrested for carrying a concealed weapon, aggravated trafficking in drugs, telephone harassment, criminal trespass, and

assault with intent to cause physical harm.

10. On September 24, 1991, Magistrate Judge James Gallas issued a search warrant based upon the Affidavit of National Park Service Ranger Gregory Cravatas. The warrant authorized a search of the van for "marijuana, marijuana seeds, marijuana cultivation tools, documents reflecting purchases of items which are used to grow marijuana, check books, savings books, and other financial documents reflecting purchases such as those stated above which are used to grow marijuana and reflecting deposits of marijuana sales, and customer names addresses and phone numbers."

11. The warrant was executed at 8:30 p.m. The following property was taken pursuant to the warrant: (1) black nylon duffel bag; (2) two shovels; (3)

box of vegetable food; (4) plastic water container; (5) two bags potting soil; (6) bag of vermiculite; (7) two black nylon backpacks; (8) folding shovel; (9) spool monofilament line; (10) road maps; (11) wallet containing Defendant's driver's license; (12) green leafy material and seeds from floor of vehicle; (13) other miscellaneous items.

12. On March 24, 1992, Defendant filed a motion to suppress certain items seized from his 1984 Dodge van by law enforcement agents claiming the agents did not have probable cause to search the vehicle and that the search warrant which was issued by Magistrate Gallas was based on erroneous information. He states that "if accurate information had been given in the Affidavit the Judge or Magistrate who was requested to issue the search warrant, it would have been found that

there was no probable cause to issue a search warrant." The alleged "false and erroneous" information related to the location of the vehicle.

13. The affidavit states that

> On September 23 @ 7:50 pm, Rangers Vasquez and Dolges observed a blue Dodge van parked on National Park Service property at the corner of Quick and Akron-Peninsula Road.

Ranger Cravatas testified at the suppression hearing that he believed this information to be correct as related to him by the other officers involved in the investigation at the time. It was not until some time later that he found out that the van was, in fact, parked about half mile to a mile down the street at the area of the Brandywine Golf Course.

14. On April 6, 1992, Defendant filed a Supplemental Motion to Suppress. Defendant indicates that the Affidavit of

Park Ranger Gregory Cravatas stated that the van was parked on National Park Service property at the corner of Quick and Akron-Peninsula Road. Defendant claims that this information was "not true and not true within the knowledge of the National Park Service." Defendant states that the van was parked at a private golf course almost one mile from the place indicated in the Affidavit. Defendant also claims that there was nothing suspicious about the van being parked at the golf course and that therefore, there was no probable cause to seize the van or the items in it.

15. On June 19, 1992, Defendant filed a second Supplemental Motion to Suppress claiming that items seized from the van should be suppressed because they were contained in a locked box. Defendant claims that the government had

no probable cause to conduct a warrantless search of the box.

16. On June 22, 1992, Defendant filed a Motion to Suppress Identification. Defendant seeks to suppress from evidence the identification of him made by agents or rangers of the National Park Service. Defendant claims that the identification made from photographs was unduly suggestive.

17. Also on June 22, 1992, Defendant filed an additional motion to suppress claiming that the rangers lacked jurisdiction to "investigate, seize or made affidavit for search warrant."

CONCLUSIONS OF LAW

1. A magistrate's determination that probable cause existed to issue a search warrant is entitled to considerable deference. White v. Fabricating Co. v. United States, 903

F.2d 404, 412 (6th Cir. 1990) (citing Illinois v. Gates, 462 U.S. 213, 236 (1983). In reviewing the magistrate's decision, the court must examine whether the magistrate had a substantial basis for concluding that probable cause existed. United States v. Brown, 951 F.2d 999 (9th Cir. 1991). The facts contained in Cravatas' affidavit demonstrate that Magistrate Gallas had such a basis for concluding that probable cause existed to believe that contraband or evidence of a crime would be found in Defendant's van.

2. Defendant's argument that the evidence should be suppressed because the affidavit contained erroneous information as to the location of the van is also without merit. The Sixth Circuit has held that a defendant challenging the truth of statements made

in an affidavit in support of a search warrant must: (1) must point to specific false statements that he claims were made intentionally or with reckless disregard for the truth; (2) must accompany his allegations with an offer of proof; and must provide supporting affidavits or explain their absence. United States v. Bennett, 905 F.2d 931 (6th Cir. 1990).

3. Defendant failed to comply with the procedural requirements set forth in Bennett. He did not accompany his allegations with an offer of proof or provide supporting affidavits or explain their absence. Nevertheless, the Court finds that even absent the challenged statements, there remains sufficient content in the affidavit to support a finding of probable cause. Therefore, Defendant's motions to suppress filed

March 24, 1992 and April 6, 1992 are denied.

4. Relying solely on United States v. Chadwick, 433 U.S. 1 (1977), Defendant argues that the search of the locked box found in the van items was unauthorized by the warrant to search the van. This argument is without merit. The scope of a search is generally defined by its expressed object. Florida v. Jimeno, 111 S. Ct. 1801 (1991). A warrant which authorizes the search of a vehicle, authorizes agents to lawfully search containers found within the interior of that vehicle which might contain the items listed in the warrant. United States v. Grandstaff, 813 F.2d 1353, 1358 (9th Cir.), cert. denied, 484 U.S. 837 (1987). Furthermore, the Ninth Circuit expressly held that Chadwick did not apply to such a search. Id. at 1359.

The search warrant authorized park rangers to search Defendant's van for marijuana, marijuana seeds, marijuana cultivation tools, and various other items used to manufacture or possess marijuana with the intent to distribute. Since these items could have been contained in the box, the rangers were authorized to search the box without obtaining an additional search warrant. Therefore, Defendant's supplemental motion filed June 19, 1992 is denied.

5. The procedures used by the park rangers to identify Defendant as Mark Darulis were not unduly suggestive. The rangers were investigating the growing of marijuana on park property. As law enforcement officers, they attempted to identify a person they had seen walking near the area where the marijuana was being grown. The picture

of a possible suspect obtained from Cuyahoga Falls police department merely confirmed that Mark Darulis was the person that they had seen in the park. Therefore, Defendant's supplemental motion filed June 22, 1992 is denied.

6. Finally, Defendant's assertion that rangers were without jurisdiction to "investigate, seize or make affidavit for search warrant" is without merit. Congress provided broad authority to the Secretary of the Interior. General Authorities Act, 16 U.S.C. 1a-6. The Secretary has delegated law enforcement responsibility to the National Park Service. A person designated as a law enforcement employee may: (1) carry firearms and made arrests; (2) execute warrants issued by a court "for the enforcement of the provisions of any federal law or regulation issued pursuant

to law arising out of an offense committed in that system . . . in connection with any Federal offense;" and (3) "conduct investigations of offenses against the United States committed in that system." The rangers were investigating an offense which had occurred on park property. They had reason to believe that the van contained contraband or evidence of this offense and therefore had the authority to impound the van and secure a search warrant. Therefore, Defendant's motion filed June 22, 1992 is denied.

CONCLUSION

For the reasons stated herein, Defendants' motions to suppress are denied.

IT IS SO ORDERED.

s/ Frank J. Battisti
Frank J. Batissi
United States District Judge

Case No.: 93-3154
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

O R D E R

FILED
AUG 20, 1993

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARK K. DARULIS

Defendant - Appellant

BEFORE: KENNEDY and NORRIS, Circuit Judges; and ENGEL, Senior Circuit Judge.

Upon consideration of the petition for rehearing filed by the appellant.

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED.**

ENTERED BY ORDER OF THE COURT

s/Leonard Green (fj)
Leonard Green, Clerk

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probably cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of

citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. . . .

FILED
MAY 20 1993

United States District Court
Northern District of Ohio
Eastern Division

UNITED STATES OF AMERICA	Case No. 5:92 CR0048
	Judge Frank J. Battisti
Plaintiff	
vs	Motion to Supplement
MARK K. DARULIS	the Record
Defendant	

NOW comes Mark Darulis and respectfully requests that the attached transcript regarding the forfeiture hearing of his vehicle be allowed into the record for his criminal case as a possible reference to facts concerning the appeal.

Respectfully submitted,

s/ Mark Darulis
Mark Darulis
3391 Montrose Avenue
Akron, OH 44333

MOTION GRANTED. IT IS SO ORDERED.

s/ Frank J. Battisti

6-2-93